

David Stidham * December 13, 2018

Page 1

1 53 UNITED STATES BANKRUPTCY COURT
2 FOR THE WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION
4
5 in re:)
6 ROSA NICHOLE RENEE) Case No. 17-41965-BTF7
7 JAMES,)
8 Debtor.)
9 DANIEL J. CASAMATTA,) 30(b)(6) Deposition of
10 ACTING UNITED STATES) BK Billing through:
11 TRUSTEE,) David Stidham
12 Plaintiff,)
13 vs.)
14)
15 CASTLE LAW OFFICE OF))
16 KANSAS CITY, PC, a))
17 Missouri Professional) Adv. Case No. 18-4168-CAN
18 Corporation,)
19 Defendant.)
20)
21 and)
22)
23 JASON C. AMERINE,)
24 Defendant.)
25

December 13 and 14, 2018

Location: Christensen & Jensen
257 East 200 South, Suite 1100
Salt Lake City, Utah 84101

Reporter: Diana Kent, RPR, CRR and
Dawn Perry, CSR
Notary Public in and for the State of Utah

EXHIBIT 3

David Stidham * December 13, 2018

Page 2

1 A P P E A R A N C E S

2 FOR THE PLAINTIFF:

3 Adam E. Miller
4 OFFICE OF THE UNITED STATES TRUSTEE
5 Attorney at Law
6 Charles Evans Whittaker Courthouse
7 400 East 9th Street, Room 3440
8 Kansas City, Missouri 64106
9 Tel: (816) 512-1940
10 Fax: (816) 512-1967
11 adam.e.miller@usdoj.gov

12 Laurie A. Cayton
13 UNITED STATES DEPARTMENT OF JUSTICE
14 Attorney at Law
15 405 South Main Street, Suite 300
16 Salt Lake City, Utah 84111
17 Tel: (801) 524-3031
18 Fax: (801) 524-5628
19 laurie.cayton@usdoj.gov

20 FOR THE DEFENDANT:

21 Matthew Koehler
22 BROWN & JAMES
23 Attorney at Law
24 800 Market Street, Suite 1100
25 St. Louis, MO 63101
Tel: (314) 242-5267
Fax: (314) 242-5467
mkoehler@bjpc.com

FOR THE DEPONENT:

Aaron B. Millar
MILLAR WALKER
Attorney at Law
5200 South Highland Drive, #300
Holladay, Utah 84117
Tel: (801) 424-5280
Fax: (801) 424-5281
aaron@millarwalker.com

(Continued on following page)

David Stidham * December 13, 2018

Page 3

1 A P P E A R A N C E S

2 ALSO PRESENT:

3 Robert B. Cummings
4 THE SALT LAKE LAWYERS
5 Attorney at Law
6 10 Exchange Place, #622
7 Salt Lake City, Utah 84111
8 Tel: (801) 590-7555
9 Fax: (801) 590-7519
10 robert@thesaltlakelawyers.com
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

David Stidham * December 13, 2018

Page 4

1 I N D E X

2	DAVID STIDHAM	PAGE
3	Examination By Mr. Miller	5
4	Examination By Mr. Koehler	160
5	Further Examination By Mr. Miller	186

6

7

8 E X H I B I T S

9	NUMBER	DESCRIPTION	PAGE
10	A	Invoice and Account Information on Huzaifah Babikir	160

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

David Stidham * December 13, 2018

Page 5

1 P R O C E E D I N G S

2

3

David M. Stidham,

4

called as a witness, being first duly sworn,

5

was examined and testified as follows:

6

7

EXAMINATION

8

BY MR. MILLER:

9

Q. This is a Rule 30(b)(6) deposition of BK

10

Billing, LLC which is a Utah entity in connection with

11

four related adversary proceedings in the United States

12

Bankruptcy Court for the Western District of Missouri

13

which have been, for pretrial purposes, consolidated in

14

regards to the case of In Re Rosa Nichole Renee James.

15

And the adversary style is Daniel Casamatta versus

16

Castle Law Office of Kansas City, PC and Jason C.

17

Amerine under case number 18-4168.

18

Would you state your name, sir.

19

A. Yes. David Michael Stidham.

20

Q. And you have been designated by BK Billing

21

as the witness to appear here today; is that correct?

22

A. Yes.

23

Q. And I know that you have been previously

24

examined in a deposition before by Ms. Cayton but I'm

25

going to go over some rules just so we are all clear.

David Stidham * December 13, 2018

Page 6

1 Everything that we are going to say today is going to
2 be recorded by the court reporter, so I need you to
3 answer my questions verbally. Okay?

4 A. Okay.

5 Q. I will try and wait for you to finish your
6 answer before I ask the next question, and if you'll
7 wait until I finish my question, that way she can make
8 a clear record.

9 A. Okay.

10 Q. I notice you are nodding your head and
11 verbally answering my question, so that's good.
12 Sometimes witnesses just nod their head and she can't
13 take that down.

14 I don't want you to speculate with regards
15 to any of my questions. If you don't know the answer,
16 I'd like you to tell me that you don't know the answer.
17 I may ask you a follow-up question which is, "Does
18 anyone in BK Billing know the answer," because this is
19 technically a deposition of the corporate entity. So
20 we might try and work with your counsel to figure out
21 if there's another way to get the information. Okay?

22 A. Okay.

23 Q. Why don't you go ahead and state what your
24 role with BK Billing is.

25 A. I'm the CEO of BK Billing.

David Stidham * December 13, 2018

Page 7

1 Q. And how long have you been the CEO?

2 A. I have been the CEO of BK Billing since
3 its founding.

4 Q. And when was that?

5 A. February of 2016.

6 Q. Okay. And don't be offended by my next
7 questions but I ask them to every witness. Have you
8 taken any drugs or alcohol in the last 24 hours that
9 would affect your ability to testify today?

10 A. No.

11 Q. Do you have any condition, mental or
12 otherwise, that would affect your ability to recall
13 events?

14 A. No.

15 Q. There's a binder of exhibits in front of
16 you and I'd like you to turn to the very first exhibit.
17 And I'll represent to you that this is a Notice of
18 Deposition, together with a subpoena issued in this
19 case. Have you seen this document before?

20 A. Yes.

21 Q. Okay. And would you agree that this is
22 the notice and subpoena under which you are appearing
23 here today?

24 A. Yes.

25 Q. Okay. If you'd turn to the sixth page of

David Stidham * December 13, 2018

Page 9

1 A. Yes.

2 Q. And who were those conversations with?

3 A. Tyler Olson, Sean Mawhinney, and a few
4 other employees that probably were present at various
5 conversations.

6 Q. How many employees does BK Billing have?

7 A. We have approximately twelve or thirteen.

8 Q. You mentioned somebody by the name of
9 Tyler Olson. What is his role at BK Billing?

10 A. He is the COO of BK Billing.

11 Q. What are his responsibilities?

12 A. Operations.

13 Q. When you say "operations," could you be a
14 little more specific?

15 A. Yes. General management of the company.

16 Q. Okay. And you mentioned Mr. Mawhinney; is
17 that correct?

18 A. Yes.

19 Q. And what is Mr. Mawhinney's role in BK
20 Billing?

21 A. Predominantly customer service.

22 Q. Does he have a title within BK Billing?

23 A. Yes.

24 Q. What is that title?

25 A. President.

David Stidham * December 13, 2018

Page 10

1 Q. And how long has he been the president of
2 BK Billing?

3 A. Since about its -- since about February of
4 2016, I would say.

5 Q. Did you have any discussions with Jason
6 Amerine or anyone at Castle Law Firm about this
7 deposition?

8 A. Yes.

9 Q. What discussions did you have?
10 Well, let me ask you this question: Who
11 did you discuss this deposition with?

12 A. Jason Amerine.

13 Q. What discussions did you have with
14 Mr. Amerine?

15 A. That we would do the deposition and then
16 we would discuss where to go from there.

17 Q. Did you discuss with Mr. Amerine what
18 questions might be asked and how to answer them?

19 A. No. Not necessarily.

20 Q. How many times did you speak with
21 Mr. Amerine about this deposition?

22 A. Once by phone.

23 Q. Do you recall when that occurred?

24 A. Saturday morning.

25 Q. This past Saturday?

David Stidham * December 13, 2018

Page 12

1 Corporation?

2 A. I believe 2013 to present.

3 Q. So that corporation still exists?

4 A. Yes.

5 Q. And you are still employed by that
6 corporation, as well?

7 A. No, I would not say employed. It's an
8 entity that I own.

9 Q. Does that entity have active clients?

10 A. Yes.

11 Q. Are any of them clients of BK Billing?

12 A. No.

13 Q. What would you say BK Billing's primary
14 business is?

15 A. Factoring.

16 Q. Factoring of attorneys' fees?

17 A. Of -- factoring of any accounts receivable.

18 Q. Does BK Billing factor any accounts
19 receivable currently that are not attorneys' fees?

20 A. Yes.

21 Q. What other types of accounts does BK
22 Billing currently factor?

23 A. Construction.

24 Q. Does BK Billing factor attorneys' fees
25 other than bankruptcies?

David Stidham * December 13, 2018

Page 13

1 A. Yes.

2 Q. What other types of law does BK Billing
3 factor fees from?

4 A. Relevance?

5 MR. MILLAR: It's my job to assert the
6 objection.

7 THE WITNESS: I'm just being curious.

8 MR. MILLAR: Just answer the question.

9 A. Family, DUI, that's what I would say.

10 Q. (By Mr. Miller) Okay. What percentage of
11 BK Billing's clients would be bankruptcy attorneys of
12 its overall client base?

13 A. A significant percentage.

14 Q. More than 50?

15 A. Yes.

16 Q. More than 75?

17 A. No. Perhaps. I don't know right off the
18 top of my head, but perhaps. You're getting pretty
19 close.

20 Q. With respect to factoring bankruptcy fees,
21 would it be a fair statement that BK Billing believes
22 that the attorneys are the clients of BK Billing?

23 A. Yes.

24 Q. Do you have any direct contractual
25 relationship with the bankruptcy debtors?

David Stidham * December 13, 2018

Page 14

1 A. No.

2 Q. Generally speaking, how would an attorney
3 who wanted to do -- let me restate this. How would a
4 bankruptcy attorney wanting to do business with BK
5 Billing sign up with you?

6 A. Website.

7 Q. What information, generally, would they
8 provide you?

9 A. Would the attorney provide us?

10 Q. Yes.

11 A. Their Bar number, the EIN of their law
12 firm or entity that they have, their address, personal
13 contact information, and goals.

14 Q. When you say "goals," you mean the goals
15 for the law firm?

16 A. Yes.

17 Q. Is Castle Law Firm a client of BK Billing?

18 A. Yes.

19 Q. Okay. What information did Castle Law
20 Firm provide to BK Billing when it became a client?

21 A. That information.

22 Q. Okay. Is there a written document that
23 that was provided?

24 A. Yes.

25 Q. You would then enter into a contractual

David Stidham * December 13, 2018

Page 15

1 relationship with the client attorney; is that correct?

2 A. Yes.

3 Q. Generally speaking, does BK Billing have
4 any role in setting the fees that the lawyer clients
5 charge?

6 A. No.

7 Q. Is there ever a case where BK Billing, or
8 I should say is there ever a bankruptcy case in which
9 BK Billing assisted a lawyer in setting fees?

10 A. No.

11 Q. If an attorney has a case that they want
12 to factor with BK Billing, how would they provide that
13 information to you?

14 A. Upload information into our software.

15 Q. What information would they upload?

16 A. They would generally attach a copy of the
17 contract between themselves and their client. They
18 would upload a copy of the payment authorization which
19 would have their fee schedule. They would -- that's
20 about it.

21 Q. Are you familiar with the term
22 "bifurcation"?

23 A. Yes.

24 Q. What is BK Billing's understanding of the
25 term "bifurcation of fees"?

David Stidham * December 13, 2018

Page 16

1 A. Splitting into two parts.

2 Q. A part that is pre-petition and a part
3 that's post-petition?

4 A. Are you speaking about for bankruptcy
5 specifically?

6 Q. Let's assume, unless I say otherwise, I'm
7 talking about bankruptcy specifically. So with regard
8 to bankruptcy cases, when you are talking about
9 splitting fees into two parts you are talking about a
10 pre-petition and a post-petition part, right?

11 A. Yes.

12 Q. You said that the attorney would attach a
13 contract. Would he, in a bankruptcy context, would he
14 attach both contracts or only one?

15 A. Both the pre-petition and post-petition
16 contracts?

17 Q. Yes. Would they attach both a
18 pre-petition and post-petition contract, or just one
19 contract?

20 A. I believe all that is required is the
21 post-petition contract. But out of habit, some
22 attorneys have uploaded both contracts.

23 Q. Does BK Billing have any underwriting
24 standards with respect to its client attorneys in
25 determining who it will do business with?

David Stidham * December 13, 2018

Page 17

1 A. What do you mean specifically?

2 Q. Well, does BK Billing do any investigation
3 into client attorneys who want to do business with BK
4 Billing?

5 A. What do you mean by "investigation"?

6 Q. Do you review any records with respect to
7 the attorney before you accept them as a client?

8 A. What kind of records specifically are you
9 talking about?

10 Q. Any records.

11 A. Yes, there are times when we review
12 records to determine who we will work with at BK
13 Billing.

14 Q. And what records would you typically
15 review?

16 A. Their standing with the Bar, Pacer filing
17 data, and bank information.

18 Q. With respect to Pacer filing data, what
19 are you specifically looking for?

20 A. Volume of cases.

21 Q. So would it be a fair statement that BK
22 Billing is looking to do business with attorneys who
23 have a certain volume of filing?

24 A. Not necessarily.

25 Q. Has BK Billing ever rejected an attorney

David Stidham * December 13, 2018

Page 18

1 who wanted to do business with them?

2 A. Yes.

3 Q. How often would you say that occurs?

4 A. Quite often.

5 Q. What are the typical reasons for rejecting
6 an attorney who wants to do business with BK Billing?

7 A. Fit. We just don't feel it's a good fit.

8 Q. When you say "fit," what is BK Billing
9 looking for in terms of a fit?

10 A. An attorney with experience and a good
11 track record with the Bar, who is compliant with the
12 bankruptcy code and understands the bankruptcy code
13 well enough to be compliant with it, and local rules.
14 So we look for experience that way. And we are looking
15 for financial viability when we look at financial
16 records. We are also looking for attorneys who have a
17 social impact desire to create more access to legal
18 services through legal innovation.

19 Q. Do you know if any type of records were
20 reviewed with respect to Castle Law and Mr. Amerine?

21 A. Yes.

22 Q. What records were reviewed by BK Billing
23 before he entered into an agreement with the company?

24 A. I believe bank records and Pacer data, and
25 I cannot recall specifically but I would imagine we

David Stidham * December 13, 2018

Page 19

1 would have checked the Bar, as well, in Missouri.

2 Q. Who typically would conduct that review
3 within BK Billing?

4 A. Now we have two or three people that would
5 perform that review. In the case of Amerine and Castle
6 Law, I'm not sure who performed that.

7 Q. Okay. And in July of 2017, did BK Billing
8 have underwriting guidelines with respect to factoring
9 particular bankruptcy cases?

10 A. Could you define "particular"?

11 Q. Well, in June or July of 2017, did you
12 review each bankruptcy case that an attorney proposed
13 to factor with you to determine if it met any sort of
14 internal guidelines?

15 A. Yes.

16 Q. What were those guidelines?

17 A. First, it needed to be a post-petition
18 contract, so we verified that a case had been filed in
19 Pacer; we verified, via Pacer, that a case had been
20 filed. And then the second step would be to verify the
21 amount of the contract, that a contract was signed and
22 executed properly, that there was an attaining payment
23 schedule with the client, between the attorney and the
24 client. And that would be about it, I would imagine.

25 Q. Okay. In July of 2017, did BK Billing

David Stidham * December 13, 2018

Page 20

1 review each agreement to determine if a debtor could
2 afford to make the payments that were proposed?

3 A. What do you mean by "afford"?

4 Q. Let me ask it this way: Did BK Billing
5 have any guidelines for accepting factoring with regard
6 to the amount of money a debtor made?

7 A. Yes.

8 Q. Okay. What were those guidelines in July
9 of 2017?

10 A. Those guidelines have changed as
11 information has come in. In July of 2017, I would
12 imagine it would be a percentage -- that the payment to
13 the attorney could not exceed a certain percentage of
14 the gross total income of the client. So we would
15 verify client gross income, and then there was a
16 calculation that said that a certain percentage of the
17 gross client income could go to an attorney monthly
18 payment, and that if the payment schedule fit within
19 that parameter we would agree to accept it for
20 factoring.

21 Q. Do you know what that percentage was?

22 A. No.

23 Q. Does BK Billing have records that would
24 indicate what that percentage was in July of 2017?

25 A. Yes.

David Stidham * December 13, 2018

Page 22

1 that were issued in the four bankruptcy cases?

2 A. I believe so, yes.

3 Q. And did BK Billing comply with the
4 subpoena?

5 A. To my knowledge, yes.

6 Q. Okay. It's true that BK Billing produced
7 records to our office responsive to the subpoena; is
8 that correct?

9 A. Yes.

10 Q. Do you know who conducted the search for
11 those records?

12 A. Yes.

13 Q. Who did that?

14 A. Tyler Olson.

15 Q. To the best of BK's knowledge, the
16 documents produced are all the documents in its
17 possession responsive to these subpoenas?

18 A. Yes.

19 Q. Let's turn back to Exhibit 2. For the
20 record, this has a Bates stamp on it that is labeled
21 BKB, the underlying case number in one of the
22 bankruptcy cases, and then 03 through 09. Do you see
23 that at the bottom?

24 A. Yes.

25 Q. Is this one of the documents that was

David Stidham * December 13, 2018

Page 23

1 produced in response to the subpoena that is Exhibit
2 19?

3 A. Yes.

4 Q. Have you seen this document before?

5 A. Yes.

6 Q. And is this a copy of the initial contract
7 between BK Billing and Castle Law Office?

8 A. Yes.

9 Q. And was the purpose of this agreement to
10 govern the factoring of fees between Castle Law and BK
11 Billing?

12 A. Yes.

13 Q. Do you know who drafted this agreement?

14 A. Yes.

15 Q. Who?

16 A. Dave Evans.

17 Q. Who is Mr. Evans?

18 A. He is our primary counsel at Kirton
19 McConkie.

20 Q. So he is outside counsel that BK Billing
21 retained for the purpose of doing this work?

22 A. Yes.

23 Can I clarify something?

24 Q. Sure.

25 A. Dave is our representative at Kirton

David Stidham * December 13, 2018

Page 24

1 McConkie. I'm not sure who he engaged in his firm to
2 actually write or produce those contracts.

3 Q. Okay. But it's a fair statement that
4 these were drafted by outside counsel retained by BK
5 Billing?

6 A. Yes.

7 Q. Do you know if any ethics lawyer ever
8 reviewed this agreement?

9 A. Yes.

10 Q. Who?

11 A. Adelaide Maudsley.

12 Wait a minute. We are talking about this
13 accounts receivable assignment agreement.

14 Q. Yes.

15 A. In regards to bankruptcy ethics
16 specifically, Adelaide Maudsley at Kirton McConkie. We
17 also had other counsel that reviewed it.

18 Q. And who is the other counsel that reviewed
19 this agreement?

20 A. We have an attorney that we use for
21 factoring who, frankly, we view as a proprietary
22 connection for our business that we are not wanting to
23 disclose. But yes, we have had other attorneys review
24 this document.

25 Q. Let's talk about some specifics in the

David Stidham * December 13, 2018

Page 25

1 agreement for a minute.

2 A. Okay.

3 Q. At the very bottom, paragraph 1 of the --
4 numeral paragraph 1 of the agreement governs the
5 purchase price for the purchase of the agreement, or
6 the contract; is that correct?

7 A. Yes.

8 Q. And it indicates that Castle Law would
9 sell accounts to BK Billing in exchange for 70 percent
10 of the face value of that agreement; is that correct?

11 A. Yes.

12 Q. It also says that Castle Law would be paid
13 within two to three days after providing BK Billing
14 with all the documents regarding an individual account;
15 is that correct?

16 A. Yes.

17 Well, hold on. I said yes too soon.

18 Q. Okay.

19 A. It says, "BK Billing will pay the Purchase
20 Price to the Firm within two to three business days
21 after BK Billing's approval of the Firm's Transferred
22 Accounts uploaded to the BK Billing online portal." So
23 documents could be uploaded into the portal, but unless
24 they got through underwriting there would not be a
25 transfer of funds until that occurred.

David Stidham * December 13, 2018

Page 26

1 Q. So BK Billing does do underwriting with
2 respect to every contract?

3 A. Yes.

4 Q. Okay. And that was the criteria that we
5 were talking about earlier; is that correct?

6 A. Yes.

7 Q. Who does the actual underwriting review at
8 BK Billing?

9 A. For each individual contract?

10 Q. Yes. Do you have staff that do that?

11 A. Yes.

12 Q. Are those lawyers?

13 A. No.

14 Q. Okay. Do you reject contracts routinely?

15 A. No. Not routinely, no.

16 Q. Okay. Does BK Billing ever reject any
17 contracts that are submitted for factoring?

18 A. Yes.

19 Q. Has BK Billing rejected any contract
20 submitted by Castle Law Office?

21 A. I'm not sure. I would imagine the answer
22 is yes.

23 Q. Does BK Billing keep any records with
24 respect to contracts that's rejected for factoring?

25 A. Yes.

David Stidham * December 13, 2018

Page 28

1 proceed with a processing fee, which is in the
2 contract, but rarely is executed.

3 Q. Let's turn to paragraph 4.1. Do you see
4 that?

5 A. Yes.

6 Q. The firm is obligated - and when I say
7 "the firm" I'm talking about Castle Law firm in this
8 case - to finish the representation of all debtor
9 clients on which it's factored fees with you; is that
10 correct?

11 A. I don't totally understand the question.

12 Q. Let me ask it a different way. The
13 contract requires that Castle Law continue to provide
14 services to the debtor, even after it's factored fees
15 with your firm?

16 A. Yes. The attorney is bound to their
17 contractual obligations to their client, yes.

18 Q. Paragraph 4.2 talks about the engagement
19 agreement; do you see that?

20 A. Yes.

21 Q. And is that the engagement agreement
22 between Castle Law and Castle Law's clients?

23 A. Let me review it so I can answer that
24 appropriately.

25 Q. Sure. Take your time.

David Stidham * December 13, 2018

Page 29

1 A. Yes.

2 Q. So these are certain standards under which
3 Castle Law is contracting to BK Billing that it will --
4 let me rephrase that.

5 Paragraph 4.2 is concerned with the
6 disclosures that will be made to the client of the law
7 firm in engagement agreements between the law firm and
8 its clients.

9 A. Yes.

10 MR. KOEHLER: Objection to the extent it
11 calls for a legal conclusion.

12 Go ahead.

13 A. Sorry. I'm not trying to be difficult,
14 but would you repeat that so I can answer it
15 accurately?

16 Q. Sure. To the best of BK Billing's
17 understanding, the purpose of Section 4.2 is to impose
18 certain standards in the agreement between the law
19 firm, in this case Castle Law, and Castle Law's
20 clients.

21 MR. KOEHLER: Same objection.

22 Go ahead. Thank you.

23 A. Yes.

24 Q. So, for example, the very first sentence
25 says, "The Firm does hereby affirm, represent, and

David Stidham * December 13, 2018

Page 30

1 warrant that the Transferred Accounts discloses the
2 existence or potential existence of this Agreement."

3 Is that correct?

4 A. Yes.

5 Q. So it is BK Billing's -- well, let me
6 strike that.

7 The contract work requires that Castle Law
8 would need to disclose the existence of this agreement
9 and any agreement with its clients it was proposing to
10 factor?

11 A. That is what the contract states, yes.

12 Q. Okay. And then 4.2(b) says that they will
13 disclose -- I'm sorry. 4.2 says that the client of the
14 law firm has been provided an opportunity to ask the
15 law firm questions regarding the sale or potential sale
16 of the account. Do you see that?

17 A. Yes.

18 Q. So you're requesting that Castle Law
19 represent that they have done that in each one of their
20 cases?

21 A. Yes.

22 Q. Okay. And (c) says, "Client has
23 acknowledged that the Firm has answered all such
24 questions to the Client's satisfaction." Is that
25 correct?

David Stidham * December 13, 2018

Page 31

1 A. Yes.

2 Q. So it's BK Billing's understanding that
3 with respect to each factored account, Castle Law is
4 representing it has done that in each case?

5 A. Yes.

6 Q. Okay. 4.2(d) says, "Client has explicitly
7 consented in writing to the Firm's assignment of the
8 accounts receivable associated with the Transferred
9 Account." Do you see that?

10 A. Yes.

11 Q. So Castle Law is warranting to BK Billing
12 that the debtor has expressly, in writing, consented to
13 the transfer of the account?

14 A. Yes.

15 Q. And then (e) says, "Client has explicitly
16 consented in writing to the Firm's disclosure of
17 certain Client information necessary to the collection
18 of the accounts receivable, such as the Client's name,
19 address, and phone number, together with a copy of the
20 Transferred Account." Do you see that?

21 A. Yes.

22 Q. So Castle Law is warranting to BK Billing
23 that it has obtained the consent of Castle's clients to
24 make certain disclosures to BK Billing; is that
25 correct?

David Stidham * December 13, 2018

Page 32

1 A. Yes.

2 Q. Does anybody at BK Billing monitor the
3 agreements that are provided to BK Billing to ensure
4 that they are in conformance with paragraph 4.2 of the
5 contract with Castle?

6 A. Yes.

7 Q. Who does that?

8 A. Our underwriting staff.

9 Q. Are they instructed to do that with
10 respect to every case?

11 A. Yes.

12 Q. Do you know of any cases that BK Billing
13 has accepted for factoring from Castle Law that did not
14 need the warranties in Section 4.2 of this agreement?

15 A. Not specifically, no.

16 Q. Okay. Let's talk about paragraph 4.3 on
17 the next page. Do you see that paragraph?

18 A. Yes.

19 Q. This first sentence of 4.3 requires Castle
20 Law to obtain a mutually agreeable payment
21 authorization from its clients; is that correct?

22 A. Yes.

23 Q. Is that typically referred to as the ACH
24 agreement?

25 A. No.

David Stidham * December 13, 2018

Page 33

1 Q. Okay. Is there a particular term of art
2 that BK Billing uses for that authorization?

3 A. I believe we call it a payment
4 authorization form.

5 Q. Well, we can discuss that later, because
6 I'll ask you some specific questions about the ones in
7 this case. But there is a requirement that Castle Law
8 provide you with a signed payment authorization form?

9 A. Yes.

10 Q. Does anyone at BK Billing monitor
11 compliance with this provision with respect to Castle
12 Law?

13 A. Yes.

14 Q. And would that be the underwriting staff?

15 A. Yes.

16 Q. Is there any requirement about when the
17 payment authorization needs to be executed in regards
18 to the filing of this case?

19 A. Yes.

20 Q. And what is that?

21 A. To be specific, we are discussing a
22 bankruptcy case, correct?

23 Q. Correct. With respect to all of these.

24 This contract with -- let me ask you this question:

25 Has Castle Law firm factored any cases with BK Billing

David Stidham * December 13, 2018

Page 34

1 that are not bankruptcy related?

2 A. Not to my knowledge.

3 Q. Okay. So the purpose of this agreement
4 that we are talking about, which is Exhibit 2, was to
5 factor bankruptcy cases? Or factor fees in bankruptcy
6 cases?

7 A. The specific reason for this contract is
8 to factor attorney fees with Castle Law. Castle Law
9 predominantly practices in bankruptcy, and so the
10 majority of the factoring opportunities that we have
11 had with Castle Law have been bankruptcy. However,
12 this agreement could just as easily transfer to other
13 areas of law if Castle Law chose to engage in those
14 areas of law.

15 Q. To the best of BK Billing's knowledge, has
16 there been any discussion between BK Billing and Castle
17 Law about factoring fees in cases other than
18 bankruptcy?

19 A. Yes.

20 Q. And what area of law was that in regards
21 to?

22 A. Family, DUI, immigration.

23 Q. And when did those conversations occur?

24 A. May or June of 20-- well, I'm not sure.

25 Let me take a pause so I can answer that appropriately.

David Stidham * December 13, 2018

Page 35

1 I believe there are e-mails that discuss when we
2 visited Kansas City. I remember having a conversation
3 with Jason Amerine about those other possibilities when
4 we visited Kansas City, whenever that was. I'm not
5 sure exactly when that was.

6 Q. Let me ask you this question, and maybe
7 this will help you. When you say visiting Kansas City,
8 you were attending an American Bankruptcy conference in
9 Kansas City; is that correct?

10 A. Yes.

11 Q. And I believe that conference was the
12 Midwestern Bankruptcy Institute; is that correct?

13 A. I believe so, yes.

14 Q. And that would have been the 2017
15 conference?

16 A. Yeah. I think that was right.

17 Q. Okay. If I represented to you that that
18 conference occurred in early October of 2017, would
19 that refresh your recollection?

20 A. I'd take your word for it, yeah.

21 Q. So you met with Mr. Amerine while you were
22 in Kansas City?

23 A. Yes.

24 Q. Did you discuss the factoring of
25 bankruptcy fees during that?

David Stidham * December 13, 2018

Page 36

1 A. Yes.

2 Q. And what generally do you recall
3 discussing?

4 A. Stay compliant with the bankruptcy code
5 and the local rules and enjoy the fruits of offering
6 zero down bankruptcy to your clients who need access to
7 their services right now. And it is your right, under
8 the bankruptcy code, to execute post-petition contracts
9 for post-petition services.

10 Q. What is BK Billing's understanding of the
11 term "zero down bankruptcy"?

12 A. Our understanding of the term zero down
13 bankruptcy at BK Billing is when a client, or potential
14 client, of an attorney would approach the attorney
15 needing a Chapter 7 bankruptcy to be filed for them and
16 would then seek some means to pay the attorney for
17 those legal services.

18 It is our understanding of the bankruptcy
19 code that the automatic stay is a pretty powerful
20 dividing line, and that anything that happens
21 pre-petition is therefore subject to the automatic stay
22 and is a pre-petition service or contract; and that
23 anything that happens post-petition would not be
24 subject to the automatic stay and is therefore a
25 post-petition contract for post-petition services which

David Stidham * December 13, 2018

Page 37

1 are legally within the right of the attorney to offer
2 to his clients, and the clients to pay the attorney for
3 those services. That is the official position of BK
4 Billing.

5 A zero down bankruptcy specifically would
6 address a client who came to an attorney for
7 pre-petition services, and the attorney would disclose
8 to that client that, "I will represent you for
9 pre-petition services, and then once I file your case,
10 you have a few options: You may choose again for me to
11 represent you in the providing of post-petition
12 services; you may choose to represent yourself and
13 continue in post-petition representation; or you may
14 choose to hire another attorney to provide
15 post-petition services for you."

16 "If you do a pre-petition agreement, I
17 might not necessarily charge you any money at all to do
18 your pre-petition services, which, once I file your
19 petition, invokes the automatic stay and draws a pretty
20 powerful line in the sand. And then once that case is
21 filed and you have some options as far as what is
22 needed to continue your bankruptcy case, I may be in a
23 position to help you perform or to help you provide
24 those post-petition services for a contracted amount or
25 fee, which would then be post-petition payments, or an

David Stidham * December 13, 2018

Page 38

1 up-front fee if you have it." Most debtors in that
2 situation do not, after having filed a bankruptcy, and
3 so they will construct some sort of payment arrangement
4 with the attorney for the post-petition services that
5 they desire to hire and will have the attorney perform
6 post-petition. That is BK Billing's official opinion
7 on what a zero down bankruptcy is.

8 Q. Okay. So I want to ask you some questions
9 about what you just said.

10 A. Sure.

11 Q. So it is BK Billing's belief that the fee
12 that is charged in the post-petition contract cannot be
13 for services that were rendered pre-petition.

14 A. Yes.

15 Q. Are you aware of any client -- let me
16 rephrase this. Through your discussions with
17 Mr. Amerine and Castle Law, are you aware of any
18 clients who have used the zero down model who have not
19 retained Castle for the post-petition agreement?

20 A. Not offhand, no.

21 Q. Okay. Through your discussions with all
22 of your client attorneys, are you aware of cases in
23 which debtors who have retained them for the
24 pre-petition services have not retained them for
25 post-petition services?

David Stidham * December 13, 2018

Page 39

1 A. Not specifically, no.

2 Q. Okay. I want to turn back to this
3 agreement for a second. I want to look at paragraph
4 4.4 of this agreement, which deals with collections.
5 Would you agree with that?

6 A. Yes.

7 Q. And paragraph 4.4 appears to require the
8 law firm to cooperate with BK Billing in collecting
9 delinquent accounts; is that correct?

10 A. I believe so, yes.

11 Q. There is, it appears, a buy-back provision
12 in that; is that correct?

13 A. Yes.

14 Q. Is BK Billing aware of any Castle Law firm
15 accounts that have become delinquent?

16 A. Yes.

17 Q. Okay. Have there been collection actions
18 taken against any Castle Law clients related to the
19 delinquency?

20 A. Could you define "collection actions"?

21 Q. Any activity -- well, let me ask it this
22 way: What kind of collection activities would BK
23 Billing usually take with respect to delinquent
24 accounts?

25 A. Generally speaking -- what would you

David Stidham * December 13, 2018

Page 40

1 define as a delinquent account?

2 Q. So a delinquent account would be a debtor
3 who hasn't paid on time, who is obligated to make
4 payments to BK Billing as a result of the transfer of
5 the agreement. Does BK Billing have collection methods
6 it would use to attempt to collect the payments that
7 were due under the account?

8 A. Yes. Generally we work directly with the
9 client of the attorney, the client that we know and
10 collect payments from, through communicating with them
11 through various communication methods, phone numbers,
12 e-mails, text messages, and then come to some agreement
13 to rectify the delinquency and continue on some form of
14 payment plan.

15 Q. Okay. Let's hypothetically say that
16 doesn't work. Is there a next step that BK Billing
17 would take if the debtor either doesn't reach an
18 agreement with BK Billing or then defaults on that
19 agreement?

20 A. There are a few options, yes.

21 Q. What steps would BK Billing take?

22 A. I think I can answer that question by
23 saying this: BK Billing has not sought legal
24 collection actions against any of its delinquent
25 accounts that I am aware of. However, since this is a

David Stidham * December 13, 2018

Page 41

1 public document, I would also say that BK Billing
2 reserves the right to engage in legal collection
3 activities should it feel it were necessary to do so.

4 Q. Okay. So as I understand your statement,
5 as we sit here today, to the best of your knowledge BK
6 Billing has never sued any of the clients involved in a
7 bankruptcy case that it has factored fees for?

8 A. That is right, yes.

9 Q. Has it ever hired a collection agency to
10 attempt to collect debts related to a bankruptcy
11 contract?

12 A. Can we define something?

13 Q. Okay.

14 A. BK Billing is a d/b/a and is now the
15 official name of the entity that we are discussing.
16 The entity itself predates the launch of BK Billing in
17 February of 2016. So in the business practices of BK
18 Billing specifically, have there been any lawsuits, or
19 hired any collection agencies?

20 Q. Well, let me ask you this question, with
21 that understanding or that explanation, thank you. So
22 this contract is between -- Exhibit 2 is between Castle
23 Law Firm and BK Billing, LLC; is that correct?

24 A. Yes.

25 Q. So has BK Billing, LLC ever retained a

David Stidham * December 13, 2018

Page 42

1 collection agency to attempt to recover fees due on a
2 bankruptcy contract?

3 A. Prior to 2016, yes.

4 Q. Okay. Since 2016?

5 A. No.

6 Q. Is there a certain point at which BK
7 Billing will just write off delinquent debt?

8 A. Yes.

9 Q. Paragraph 4.4 of this agreement does
10 indicate that if BK Billing were to take any legal
11 action, they would need to notify the lawyer
12 beforehand; is that correct?

13 A. Yes.

14 Q. And then the lawyer would have ten days
15 with which to buy back the account; is that correct?

16 A. Yes.

17 Q. And I assume by "buy back the account,"
18 it's BK Billing's understanding that that would mean
19 pay back to BK Billing any amounts that were advanced
20 as payment for that account?

21 A. Yes.

22 Q. Okay. Do you know if Castle Law firm has
23 ever bought back any accounts that have been factored
24 with BK Billing?

25 A. No. Not to my knowledge.

David Stidham * December 13, 2018

Page 43

1 May I clarify something?

2 Q. Sure.

3 A. In this case, the idea of buy-back is
4 very, very specific to the entirety of the contract.
5 We do have a working -- we sometimes call it escrow,
6 although that's not exactly the most accurate term,
7 where we had a percentage of the purchase price that is
8 held back from the total contract value against the
9 risk of future default. That is quite active. That
10 percentage point is quite active.

11 What I understand this provision to mean
12 as buy-back is writing off the entire account in one
13 shot, which does rarely happen. So when we say
14 buy-back as it pertains to this provision, I am unaware
15 of Castle Law having bought back the entirety of the
16 AR. I am aware, however, as is the norm of all of our
17 clients, to have significant action in the holdback
18 account.

19 Q. Okay. Let me ask you this question, and
20 we will get this in a minute: This document was
21 amended, right? There was an amended contract?

22 A. I believe so.

23 Q. And we will get to that in a second. So
24 what I'm asking you about is the original agreement. I
25 have some questions about the holdback, which we will

David Stidham * December 13, 2018

Page 44

1 get to when we talk about the amended agreement, okay?

2 A. Okay.

3 Q. So 4.6 says, with that understanding and
4 explanation of what you just told me, that if the law
5 firm, in this case Castle Law, breached any of the
6 representations or warranties, it would be obligated to
7 purchase back the account from BK Billing; is that
8 correct?

9 A. Yes.

10 Q. Do you know if that's ever happened with
11 respect to Castle Law?

12 A. No.

13 Q. Let's turn to paragraph 5.2 at the very
14 bottom of that page. "Use of Client Information and
15 Sale of Account Receivables." Is that correct?

16 A. Yes.

17 Q. And this provision permits BK Billing,
18 with prior notice, to further sell any factored
19 accounts; is that correct?

20 Actually, let me restate that, because I
21 used some words in there that probably aren't going to
22 read right in the transcript.

23 Is it your understanding that there are
24 provisions in paragraph 5.2 of this agreement that
25 would permit BK Billing to further sell accounts that

David Stidham * December 13, 2018

Page 46

1 Castle Law's clients under certain circumstances; is
2 that correct?

3 A. Yes.

4 Q. To the best of your knowledge, has BK
5 Billing ever done that with respect to a Castle Law
6 client?

7 A. No.

8 Q. Does BK Billing do that as part of its
9 regular practice?

10 A. Report negatively?

11 Q. Yes.

12 A. No.

13 Q. Okay. Let's move to Exhibit 3. Done with
14 this one. As we mentioned before, you talked about
15 escrowing, and have you seen this document before?

16 A. Yes.

17 Q. And would it be fair to say that is an
18 amendment to Exhibit 2?

19 A. Yes.

20 Q. And that amendment is dated June 26, 2017;
21 is that correct?

22 A. I'm looking for the date. Yes.

23 Q. Okay. And for the record, this was
24 labeled as BK Billing 1 through 2. Was this a document
25 that was produced to our office as a result of the

David Stidham * December 13, 2018

Page 47

1 **October 2017 subpoena?**

2 A. Yes.

3 Q. Okay. To the best of your knowledge this
4 is an accurate copy of the amendment?

5 A. Yes.

6 Q. And what was the purpose of this
7 amendment, to the best of BK Billing's knowledge?

8 A. I believe to adjust the overall purchase
9 price and then the escrowed amount of the accounts
10 receivable assignment agreement.

11 Q. Okay. So as I understand it, this
12 increased the purchase price to 75 percent of the face
13 value of the transferred account.

14 A. Yes.

15 Q. And we didn't discuss this, but
16 "transferred account" in this agreement meant the
17 receivable that was sold to BK Billing; is that
18 correct?

19 A. Yes.

20 Q. Okay. And then it changed how that
21 percentage was disbursed to Castle Law firm; is that
22 correct?

23 A. Yes.

24 Q. And so would it be a fair statement that
25 under the revised agreement, Castle Law would receive

David Stidham * December 13, 2018

Page 48

1 60 percent of the face value of the contract initially?

2 A. Yes.

3 Q. Assuming that it met underwriting
4 standards of course. Correct?

5 A. Yes.

6 Q. And then the remaining 15 percent would be
7 placed into some sort of holdback or escrow?

8 A. Yes.

9 Q. Could you just generally explain to me how
10 the escrow works from BK Billing's perspective?

11 A. Yes. So we place -- we advance 60 percent
12 of the purchase price as opposed to -- well, let me
13 restate that. We advance 60 percent -- this is
14 actually worded incorrectly.

15 We advance 60 percent of the overall
16 contract amount that is disbursed by BK Billing to the
17 law firm. We then take 15 percent of the overall
18 contract amount and essentially hold it back off of the
19 advance or purchase amount that we give so that we have
20 some space on the total contract value to make
21 adjustments for delinquent accounts.

22 If the account is over the 15 percent
23 holdback amount for delinquency, then that affects BK
24 Billing. If it is under 15 percent of the delinquency
25 holdback amount, then the delinquency amount is taken

David Stidham * December 13, 2018

Page 49

1 out of the holdback amount and any remaining funds are
2 then disbursed to the attorney.

3 Q. Okay. Let's use a hypothetical example
4 and we are going to use really simple numbers because
5 my math skills are really weak. Let's say the contract
6 amount was a thousand dollars. So understand that
7 agreement, under that hypothetical agreement, BK
8 Billing would, assuming it got all the payments, pay
9 \$750 to Castle Law Firm.

10 A. Yes.

11 Q. So it would initially pay, of that \$1000,
12 \$600 to Castle Law Firm initially.

13 A. Yes.

14 Q. And then it would hold \$150 in that escrow?

15 A. Yes.

16 Q. Okay. So if the debtor defaulted and
17 didn't make payments, Castle Law would be on the hook
18 for the first \$150 in that example?

19 A. Yes.

20 Q. Okay. So BK Billing wouldn't have a
21 default risk unless the default was more than \$150.

22 A. Yes.

23 Q. And then BK Billing would bear the default
24 risk of that over the \$150, or that 15 percent.

25 A. Yes.

David Stidham * December 13, 2018

Page 50

1 Q. So it's a fair statement that Castle Law
2 bears some risk if there is a default of the factoring
3 by its client?

4 A. It's dependent upon how you define "risk."

5 Q. Well, I'm defining risk as the possibility
6 that it would not get paid the full 75 percent.

7 A. Of the purchase amount.

8 Q. Correct.

9 A. Yes.

10 Q. Let's turn to Exhibit 4 and this is Bates
11 stamped 1935 to through 1936 of our production to the
12 defendants in this case. Have you ever seen this
13 document before?

14 A. Yes. No. This document, no. This
15 information looks familiar to me.

16 Q. Okay. So why don't I represent that this
17 was a printout of a screenshot of a presentation to be
18 made at the National Association of Consumer Bankruptcy
19 Attorneys, NACBA, from 2017. Is it your understanding
20 that there was a presentation made at NACBA's
21 conference about zero down bankruptcies?

22 A. Yes.

23 Q. And people from BK Billing participated in
24 that presentation?

25 A. Yes.

David Stidham * December 13, 2018

Page 58

1 Q. Does BK Billing ever provide any training
2 for its client attorneys on how the factoring of fees
3 works with BK Billing?

4 A. On how factoring fees for attorney's
5 clients works specifically?

6 Q. Yes.

7 A. Yes.

8 Q. How often do you provide that training?

9 A. Generally a few times a year.
10 Individually, upon the needs of the client.

11 Q. Okay. Do you know if you have ever
12 provided any training to Mr. Amerine with respect to
13 how BK Billing factors fees?

14 A. Yes.

15 Q. Do you know when he attended trainings
16 provided by BK Billing?

17 A. No.

18 Q. Would BK Billing have records of who
19 attended each one of its trainings?

20 A. It may have records regarding its
21 conference calls, yes.

22 Q. Okay. We will make a request to see if
23 you have such records.

24 Do you know if BK Billing, as part of
25 those trainings, ever provided advice or a discussion

David Stidham * December 13, 2018

Page 124

1 share insight, information and opinions with
2 BK Billing clients, yes.

3 Q. Okay. Let's turn to Exhibit 26. And, for
4 the record, this is page 128 in the defendants'
5 discovery.

6 In the middle of that page, do you see an
7 e-mail dated December 15th of 2017 from Mr. Amerine
8 that says, "Sean: Can you give us the password to your
9 research library on your website?"

10 A. Yes.

11 Q. Are you -- does BK Billing have a research
12 library that is accessible to its client attorneys?

13 MR. KOEHLER: I'm going to object just to
14 the extent that this is a fraction of an e-mail
15 document. To the extent that you are going to ask the
16 witness questions about the e-mail, I believe he's
17 entitled to know the entire context of the e-mail
18 string.

19 With that said, you can go ahead and
20 answer, sir.

21 THE WITNESS: I would not necessarily term
22 it a research library, but we do have much information
23 that we can provide to our attorneys' clients upon
24 their request.

25 Q. (By Mr. Miller) Well, let me ask you this

David Stidham * December 13, 2018

Page 125

1 **question: Does BK Billing have a section on its**
2 **website with opinions or other documents that client**
3 **attorneys can access with a password?**

4 A. BK Billing has a section on its website
5 where attorneys can access case law and cases that are
6 pertinent to bifurcation and factoring, yes.

7 Q. Okay. Do you know what information is
8 stored on that website?

9 A. Yes.

10 Q. Okay. It's just case law regarding the
11 various topics you discussed?

12 A. Yes. BK Billing has spent many dollars
13 and resources in accumulating that information, and
14 that is one of the value adds that we provide to our
15 attorneys, is the fact that we have done that work and
16 we make information easily and readily available to our
17 clients, yes.

18 Q. Who gathered the documents that appear on
19 that website?

20 A. It's collaboration.

21 Q. Would it only be people at BK Billing?

22 A. And attorneys that BK Billing hired for
23 that purpose, yes.

24 Q. Do you know if that research library was
25 actually accessed by somebody at Castle Law Firm?

David Stidham * December 13, 2018

Page 154

1 A. Yes.

2 Q. Okay. So the underwriters, when reviewing
3 a contract to accept it for factoring, would apply
4 these guidelines?

5 A. Yes.

6 Q. Let's talk about the re -- the provision
7 that says Recourse.

8 Do you see that?

9 A. Yes.

10 Q. What's your understanding of what the word
11 "recourse" means in this document?

12 A. My understanding of what the word
13 "recourse" means is the ability to be held legally
14 responsible for the performance of a contract or
15 financial note.

16 Q. So it's BK Billing's belief that only
17 attorneys that have a negative holdback balance will be
18 responsible for payment of any delinquent amounts?

19 A. Yes.

20 Q. But it is a true statement that with
21 respect to attorneys that have a positive holdback
22 balance, delinquent amounts may be deducted from their
23 holdback?

24 A. Yes. This would apply lightly, because,
25 as you've seen from our contracts, we don't have

David Stidham * December 13, 2018

Page 155

1 personal guarantees or things like that.

2 The way that we use that term is -- in the
3 event that an attorney were to be grossly over their
4 delinquency rate within their holdback amount, we would
5 not advance the full amount of the future contracts to
6 the attorney without that delinquency being remedied
7 from those advances.

8 So in the event an attorney was a thousand
9 dollars over their holdback or whatever, and the
10 advance was 1,200, we would advance 200 and retain the
11 thousand, because the attorney's account was negative.

12 Q. Okay. Do you see the next provision that
13 **says No Interest?**

14 A. Yes.

15 Q. And this provision is bolded; is that
16 **correct?**

17 A. Yes.

18 Q. And it says, "It is essential for the
19 client to understand that their post-petition payments
20 cost them zero percent interest. This is a
21 post-petition factoring agreement between the attorney
22 and BK Billing. There is no financing cost to the
23 debtor."

24 Do you see that?

25 A. Yes.

David Stidham * December 13, 2018

Page 162

1 A. This is a printout of invoice details for
2 a Castle Law client, Huzaifah Babikir.

3 Q. All right. And, generally, can you
4 provide a summary of what this Exhibit A is telling you
5 about the Castle Law client Babikir and payments
6 that --

7 A. Yes. This shows the advances that were
8 paid, according to this particular contract or invoice,
9 and then the payment receipts that have been received
10 in accordance with that contract.

11 Q. Okay. And how many payments were
12 received, according to that contract?

13 A. It appears to be six.

14 Q. And was that all of the payments that were
15 expected for that contract?

16 A. No.

17 Q. Would you agree with me that if we
18 calculated up the missed payments, that the amount
19 would be about \$1,100?

20 A. Yes.

21 Q. Okay. And based upon your testimony
22 yesterday, would it be fair for me to assume that BK
23 Billing has not taken any type of collection actions
24 against this Babikir, formal type of lawsuits,
25 small-claims court, anything like that?

David Stidham * December 13, 2018

Page 163

1 A. Yes.

2 Q. All right. You would also agree that
3 Castle Law, to the extent that you are aware of, has
4 not also filed any type of small-claims actions or
5 anything against client Babikir, correct?

6 A. To my knowledge, that is my understanding.

7 Q. All right. I'm going to jump around a
8 little bit, because I'm trying to cover some questions
9 that I have based upon your answers to Mr. Miller's
10 questions over the last day.

11 The first thing I want to ask is,
12 sometimes his questions have talked about factoring
13 fees, and I understand from your testimony -- would it
14 be fair that BK Billing's position is they are
15 factoring contracts that a law firm has with the law
16 firm's client? Would that be correct?

17 A. Yes.

18 Q. To the extent that the contract is for
19 attorneys' fees, it is what it is. True?

20 A. Yes.

21 Q. Okay. But, specifically, BK Billing is
22 not factoring attorneys' fees, per se? In other words,
23 they are not hiring -- a client -- let me strike that.

24 A consumer is not hiring BK Billing and
25 agreeing to pay BK Billing fees and they are factoring

David Stidham * December 13, 2018

Page 164

1 with that some type of arrangement with the law firm.
2 True?

3 A. That would be correct, yes.

4 Q. All right. So to the extent that you've
5 been answering any questions in which the phrase
6 "factoring fees" -- would it be fair that what you are
7 actually -- your company is actually factoring, to my
8 understanding, is contracts?

9 A. Yes. We are factoring the accounts
10 receivable of a service provider -- in this case,
11 attorneys -- who verify that accounts receivable in the
12 form of service contracts.

13 Q. Okay. Mr. Miller -- let me -- again, I'm
14 jumping around.

15 You were asked some questions, and I think
16 even today touched upon what's called the company's
17 underwriting policies or procedures. In 2017 -- in
18 July, for example, of 2017, I think you were shown some
19 documents involving Castle Law. Did BK Billing work to
20 ensure that there were proper disclosures to consumer
21 clients of Castle Law Firm during their underwriting
22 analysis?

23 MR. MILLER: Objection to form. I'm not
24 sure I understand your question, but if he does, he can
25 answer it.

David Stidham * December 13, 2018

Page 170

1 Q. Makes sense.

2 And just for clarity, when you use the
3 word "shrinkage," you're talking about, like in a
4 retail context, shoplifting --

5 A. Yes.

6 Q. -- or damaged product. It hurts your
7 bottom line --

8 A. Yes.

9 Q. -- correct?

10 A. Yes.

11 Q. Okay. In the context of factoring of
12 bankruptcy accounts receivables, then, would you agree
13 that part of this fit that you are talking about is
14 that you want to have clients -- your law firm clients
15 who you perceive to be ethical? Would that be fair?

16 A. Yes.

17 Q. You also want to have law firm clients
18 that you feel make an effort to meet the requirements
19 of the bankruptcy law. Would that be fair?

20 A. Yes.

21 Q. And if you did not have a bankruptcy law
22 firm client that was meeting those, would it be fair
23 for me to assume that you would end the relationship
24 with that client?

25 A. Absolutely.

David Stidham * December 13, 2018

Page 171

1 Q. Because it's not in your best interests
2 and your business interests, as far as you are a
3 witness and a CEO of BK Billing, to have that
4 relationship.

5 Would you agree with that?

6 A. Yes.

7 Q. You also talked -- I think there was some
8 testimony yesterday -- and I'm not -- a touchy subject,
9 because I'm not trying to hold you to it. I realize
10 that this could be a transcript that could be open to
11 the public. But I think that there was some testimony
12 that there was a certain type of fee that the contract
13 allows BK Billing to possibly charge a law firm client,
14 but you indicated might not be charged in every
15 situation.

16 Do you remember that testimony?

17 A. Yes.

18 Q. Okay. If your -- would it be correct for
19 me to assume that if you charged the fee that the
20 agreement allows you to charge each time, that would
21 help your firm cover costs, lights, electricity,
22 employee salary, whatever it is, rent? It helps your
23 company's overhead.

24 Would that be a fair statement?

25 A. Yes.

David Stidham * December 13, 2018

Page 173

1 speculation, but he can answer.

2 THE WITNESS: No, it would not surprise me
3 if an attorney engaged in a similar type of strategy
4 for that.

5 Q. (By Mr. Koehler) Okay. Mr. Miller was
6 asking you questions about the information, I think the
7 way you described it, research and cases from across
8 the nation that you willingly provide to your clients
9 as a service to those. Some of those questions I think
10 were a little bit yesterday, you've also asked about
11 those this morning.

12 Do you recall that?

13 A. Yes.

14 Q. Would you agree with me that if a law
15 firm -- and I'll give you an example -- like my client,
16 Castle Law, had to do all of the research on its own,
17 that that would cause it, potentially, to have to
18 charge its clients more money in order to carry out
19 that research?

20 Would that make sense?

21 A. Yes, that would make sense.

22 Q. So by Castle Law using the research -- the
23 information, as you correctly described it, that your
24 company has accumulated, that, arguably, is a benefit
25 that Castle Law is helping pass along to its clients by

David Stidham * December 13, 2018

Page 174

1 not having to charge them more money to do that
2 research on its own. Fair?

3 MR. MILLER: Objection. Calls for
4 speculation.

5 You can answer.

6 THE WITNESS: Yes, that is fair.

7 MR. KOEHLER: Okay.

8 Q. (By Mr. Koehler) Mr. Miller was also
9 asking you questions about the information that you
10 share with your clients about different actions that
11 have been brought by U.S. Trustee's offices across the
12 country.

13 Do you remember those questions?

14 A. Yes.

15 Q. And you've shared information with your
16 clients, including Castle Law, about some of those
17 lawsuits, is my understanding. True?

18 A. Yes.

19 Q. Would you expect that the U.S.
20 Trustee's -- the different regional offices also would
21 share information about these actions that they've
22 taken that relate to your company, amongst themselves?

23 MR. MILLER: Objection. Calls for
24 speculation.

25 You can answer.

David Stidham * December 13, 2018

Page 179

1 way we know how to get a post-petition bankruptcy
2 receivable is through the process of bifurcation.

3 Q. (By Mr. Koehler) And it's not by
4 accident -- oops, I forgot to do half my services
5 before the bankruptcy is filed; I guess I'll go ahead
6 and bifurcate this agreement -- it's a planned process.
7 Would that be a fair statement?

8 A. Yes.

9 Q. All right. You've answered questions over
10 the last several hours between yesterday and today
11 about the underwriting process and evaluating, for
12 example, some information with regards to the law
13 firm's client. So there might be bank statements or
14 paycheck records or something like that.

15 Do you recall those questions and your
16 answers about those documents?

17 A. Yes.

18 Q. All right. On the topic of the law firm's
19 clients and, for example, the sophistication of a
20 client, would you expect that a client that is needing
21 bankruptcy services -- potential bankruptcy services,
22 and knowing enough to search out a law firm, has at
23 least some level of sophistication to be able to make
24 these types of decisions about their personal finances?

25 A. Yes.

David Stidham * December 13, 2018

Page 180

1 Q. All right. If you were wanting to try to
2 get a viewpoint, an opinion, if you will, because --
3 strike that. Let me back up.

4 Would it be fair for me to say that in
5 your business model BK Billing does not, for example,
6 call up a law firm's client and have a ten-minute
7 interview where they are asking questions and having
8 the client answer questions as far as trying to gauge
9 that client's specific sophistication? Would that be
10 fair?

11 A. Yeah, that does not happen.

12 Q. Would you -- as the CEO of BK Billing,
13 would you want to obtain the viewpoint or opinion about
14 sophistication of a client from a law firm that
15 regularly deals with consumers, or would you want to
16 try to get or rely upon the opinion, for example, of a
17 government lawyer who has been a 30-year bureaucrat? I
18 mean, whose opinion would you trust more?

19 A. We, as a rule, default to the service
20 provider and the service provider's opinion.

21 Q. Do you value that they have daily
22 interaction with these types of consumer clients versus
23 a government lawyer?

24 A. We would expect it.

25 Q. Would you also expect that -- based upon

David Stidham * December 13, 2018

Page 181

1 my prior questions a few minutes ago of wanting to deal
2 with ethical lawyers, that you would be wanting to have
3 relationships with lawyers and law firms that are
4 interested in looking after the best interests of their
5 clients?

6 A. That is one of the key criteria.

7 Q. And that would include topics such as
8 conflicts of interest or anything. Would that be fair?

9 A. Yes.

10 Q. All right. And based upon your
11 experience, would you trust the clients that you are
12 working with to be able to provide that type of
13 analysis, or would you expect that a government lawyer,
14 who has been with the government for 30 years, for
15 example, would be in the best position to make that
16 analysis?

17 MR. MILLER: Objection. Calls for
18 speculation.

19 You can answer.

20 THE WITNESS: It is my experience that
21 there are varying degrees of sophistication amongst
22 service providers that we deal with or that we work
23 with.

24 However, generally speaking, the consumer
25 attorneys that we work with have their boots on the

David Stidham * December 13, 2018

Page 182

1 ground, so to speak, and understand the actual needs of
2 the people that are coming to them for service, and
3 their viewpoint as to how to best meet their clients'
4 needs and their consumers' needs would hold weight, in
5 my mind, as opposed to a bureaucratic opinion, yes.

6 Q. (By Mr. Koehler) Okay. I asked you,
7 before you came in here today, to read -- there is a
8 plaque in the lobby of this U.S. Trustee's office. Did
9 you read that?

10 A. Yes.

11 Q. And would you agree with me that it
12 generally said that the U.S. Trustee's office -- that
13 their goals are to preserve the integrity and
14 efficiency of the bankruptcy process, the bankruptcy
15 system?

16 MR. MILLER: Objection. It exceeds the
17 scope of my direct examination of the debtor, and it's
18 irrelevant, but he can answer.

19 THE WITNESS: Yes.

20 Q. (By Mr. Koehler) Okay. And would you
21 agree with me that if you were trying to achieve
22 efficiency, that it would be more efficient to have a
23 conversation with someone than to file, in your words,
24 a spurious lawsuit?

25 MR. MILLER: Objection. Same objection I

David Stidham * December 13, 2018

Page 183

1 raised before.

2 You can answer.

3 THE WITNESS: In my opinion, yes, I would
4 think a congenial conversation would be more efficient
5 than an adversarial process, yes.

6 Q. (By Mr. Koehler) And you're an experienced
7 businessman; my expectation is that you've had such
8 conversations in the past -- and I'm guessing -- but
9 they always don't work themselves out, and they could
10 lead to a lawsuit.

11 Would that be a fair statement?

12 A. Yes.

13 Q. But you would agree that if you wanted to
14 be efficient, then it would be better to try to have
15 the conversation first rather than file the lawsuit
16 first.

17 Would that be a true statement?

18 MR. MILLER: Objection. It calls for
19 speculation and exceeds the direct examination.

20 You can answer.

21 THE WITNESS: Yes.

22 Q. (By Mr. Koehler) All right. In -- my
23 understanding is your firm actually tried to have such
24 a conversation with the plaintiff in this lawsuit,
25 Mr. Casamatta, like 18 months ago or so.

Page 184

25 THE WITNESS: Not -- not to my knowledge,

David Stidham * December 13, 2018

Page 185

1 no.

2 Q. (By Mr. Koehler) If such a conversation
3 was occurring, I would assume, because you are the CEO
4 of the company, that you would know of it. True?

5 A. Yes.

6 Q. Okay. Would you welcome such a
7 conversation?

8 A. Absolutely.

9 Q. Does your company have anything to hide
10 with regard to this business model?

11 A. No. I believe our marketing efforts have
12 proven that.

13 Q. And let me clarify. I understand you have
14 proprietary information that you don't want to share,
15 but you're not opposed to having a conversation about
16 the model, in general, with anyone from the Department
17 of Justice, whether it's in the Western District of
18 Missouri or Maine or Hawaii or anywhere else.

19 Would that be a fair statement?

20 A. Yes, we would welcome that conversation.

21 MR. KOEHLER: All right. No further
22 questions. Thank you.

23 MR. MILLER: I have some brief redirect.

24 THE WITNESS: Okay.

25

David Stidham * December 13, 2018

REPORTER'S CERTIFICATE

STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

I, Dawn Perry, Certified Shorthand
Reporter and Notary Public in and for the State of
Utah, do hereby certify:

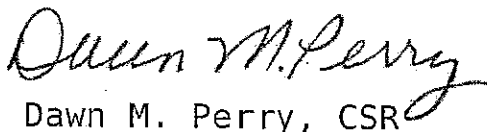
That prior to being examined, the witness,
David Stidham, was by me duly sworn to tell the truth,
the whole truth, and nothing but the truth;

That pages 116 through 192 of said
deposition were taken down by me in stenotype on
December 14, 2018, at the place therein named, and was
thereafter transcribed and that a true and correct
transcription of said testimony is set forth in the
preceding pages;

I further certify that, in accordance with
Rule 30(e), a request having been made to review the
transcript, a reading copy was sent to Attorney Aaron
Millar for the witness to read and sign, and the
original transcript will be delivered to Attorney Adam
Miller for safekeeping.

I further certify that I am not kin or
otherwise associated with any of the parties to said
cause of action and that I am not interested in the
outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this
28th day of December, 2018.


Dawn M. Perry, CSR